

CHAPTER 19-20.1

FERTILIZER AND SOIL CONDITIONER LAW

19-20.1-01. Enforcing official.

Repealed by S.L. 2013, ch. 187, § 18.

19-20.1-02. Definitions of words and terms.

When used in this chapter:

1. "Brand" means a term, design, or trademark, used in connection with one or several grades of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments, or plant amendments.
2. "Bulk" means in a nonpackaged form.
3. "Compost" means a material derived primarily or entirely from biological decomposition of vegetative organic matter or animal manure that does not have inorganic fertilizer added other than to promote decomposition.
4. "Deficiency" means that amount of plant nutrient or active ingredient found by analysis is less than the amount guaranteed resulting from a lack of nutrient or active ingredients or from lack of uniformity.
5. "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments, or who sells or offers for sale fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments in this state.
6. "End user" means a person who uses a fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendment, or plant amendment in a manner for which the product was intended.
7. "Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products excluded by the commissioner by rule.
8. "Fertilizer material" means a fertilizer which:
 - a. Contains no more than one of the primary plant nutrients;
 - b. Has approximately eighty-five percent of its primary plant nutrient content present in the form of a single chemical compound; or
 - c. Is derived from a plant or animal residue or byproduct or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification or concentration.
9. "Grade" means the percentages of total nitrogen, available phosphate, and soluble potassium or soluble potash stated in the same terms, order, and percentages as in the "guaranteed analysis". "Guaranteed analysis" means the minimum percentage of plant nutrients claimed.
10. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer, soil amendment, or plant amendment.
11. "Label" means all written, printed, or graphic matter upon or accompanying any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment and any printed material or media announcements used in promoting their sale.
12. "Licensee" means any person licensed by the commissioner to distribute a fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment.
13. "Manipulated" means fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments that are manufactured, blended, or mixed, or animal or vegetable manures that have been treated in any manner, including

mechanical drying, grinding, pelleting, and other means, or by adding other chemicals or substances.

14. "Micronutrient" means a fertilizer that contains only essential chemical elements that are required at low levels for normal plant growth.
15. "Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments.
16. "Official sample" means any sample of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment, taken by the commissioner and designated as "official" by the commissioner.
17. "Organic" in reference to fertilizer nutrients refers only to naturally occurring substances generally recognized as the hydrogen compounds of carbon and their derivatives or synthetic products of similar composition with a water insoluble nitrogen content of at least sixty percent of the guaranteed total nitrogen.
18. "Percent" or "percentage" means the percentage by weight.
19. "Plant amendment" means a substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants except fertilizers, unless the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient, or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
20. "Plant nutrient" means a nutrient generally recognized as beneficial for plant growth, including nitrogen, phosphorus, potassium, calcium, magnesium, sulfur, boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.
21. "Primary plant nutrients" means nitrogen, phosphate, and potash.
22. "Registrant" means the person who registers fertilizers, soil amendments, or plant amendments under the provisions of this chapter.
23. "Sell" when applied to fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments includes:
 - a. The act of selling or transferring ownership.
 - b. The offering for sale, exchange, or distribution.
 - c. Giving away.
 - d. Receiving, accepting, holding, or possessing for sale, exchange, or distribution.
24. "Soil amendment" means any substance that is intended to improve the characteristics of the soil except fertilizers, unmanipulated animal manures, unmanipulated vegetable manures, and pesticides. The term includes fertilizer if the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
25. "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use.
26. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

19-20.1-03. Product registration - Fees.

1. Each brand and grade of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, and plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state.
2. The application for registration must be submitted to the commissioner on a form furnished by the commissioner and must be accompanied by:
 - a. A current product label; and
 - b. A fee of fifty dollars per product.
3. A registration is effective for a two-year period beginning July first and ending June thirtieth of each even-numbered year.
4. Any request for a registration renewal received after July thirty-first must be assessed a penalty of one hundred dollars per product.

5. a. This section does not require a distributor to register any product listed in subsection 1 if that product is already registered under this chapter by another person, providing the label complies with the issued registration.
- b. This section does not require the registration of compost that is transferred between parties without compensation.
6. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

19-20.1-03.1. Distributor's license - Fees.

1. A person may not distribute any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment in this state without first obtaining a distributor's license from the commissioner.
2. A license is required for each location or mobile mechanical unit used by a distributor in the state.
3. The application for the license must be submitted on a form furnished by the commissioner and must be accompanied by a fee of one hundred dollars.
4. A license is effective for a two-year period beginning July first and ending June thirtieth of each even-numbered year.
5. License renewal applications received after July thirty-first must be assessed a penalty of one hundred dollars per location.
6. A license issued under this section:
 - a. Is not transferable;
 - b. Must be conspicuously posted at each location; and
 - c. Must be carried in each mobile mechanical unit operating in the state.
7. The requirements of this section do not apply to persons that distribute only:
 - a. Specialty fertilizers; or
 - b. Seed inoculants.
8. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

19-20.1-03.2. Proof of effectiveness.

The commissioner may require proof of claims made for any product covered by this chapter and may require proof of value when used as directed or recommended. The commissioner must rely on data from scientifically designed and reported studies conducted under conditions similar to those in this state under which the product is intended to be used. The commissioner may accept or reject other sources of proof as additional evidence.

19-20.1-03.3. Protected information.

Repealed by S.L. 2013, ch. 187, § 18.

19-20.1-03.4. Guaranteed analysis.

1. Guaranteed analysis must be claimed as follows:
 - a. Total Nitrogen (N) _____ percent;
 - b. Available Phosphate (P_2O_5) _____ percent; and
 - c. Soluble Potash (K_2O) _____ percent.
2. In the case of unacidulated mineral phosphatic materials and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphate or degree of fineness, or both, may also be guaranteed.
3. Rules implemented under this chapter may allow or require guarantees for plant nutrients other than nitrogen, phosphorus, and potassium.
 - a. Guarantees under this subsection must be expressed in the form of the element.
 - b. The commissioner may require that the sources of other nutrients, including oxides, salt, and chelates, be stated on the application for registration and included as a parenthetical statement on the label.

- c. Other beneficial substances or compounds, determinable by laboratory methods, may be guaranteed with permission of the commissioner after consultation with the director of the North Dakota state university extension service.
- 4. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and rules prescribed by the commissioner.
- 5.
 - a. The commissioner, by rule, may require potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds [45.36 kilograms] per ton [907.18 kilograms].
 - b. The guaranteed analysis of a soil amendment or plant amendment must be an accurate statement of composition, including the percentages of each ingredient. If the product is a microbiological product, the number of viable micro-organisms per milliliter for a liquid or the number of viable micro-organisms per gram for a dry product must also be listed.

19-20.1-04. Label requirement.

Any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment distributed in this state must be labeled.

- 1. If the product is in a container, the label must be plainly printed in English and conspicuously placed on or attached to the container. The label must include:
 - a. The net weight;
 - b. The brand;
 - c. The grade, unless no primary nutrients are claimed;
 - d. The guaranteed analysis; and
 - e. The name and address of the registrant.
- 2. If the product is distributed in bulk, a document providing the same information required in subsection 1 must accompany the delivery and be provided to the end user at the time of delivery.
- 3. A fertilizer formulated according to specifications that are furnished by a consumer prior to mixing must be labeled to show the net weight, the guaranteed analysis or amount of each plant nutrient it contains in pounds [kilograms], and the name and address of the registrant.

19-20.1-05. Labeling soil conditioners.

Repealed by S.L. 1977, ch. 198, § 18.

19-20.1-05.1. Fertilizer in bulk storage.

Repealed by S.L. 2013, ch. 187, § 18.

19-20.1-06. Inspection fees - Tonnage reports - Penalty.

- 1.
 - a. An inspection fee in the amount of twenty cents per ton [907.18 kilograms] must be paid to the commissioner on all fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments, and plant amendments distributed in this state. The inspection fee may not be less than ten dollars.
 - b. This subsection does not apply to:
 - (1) Manufacturers, distributors, or exchanges of product between them; or
 - (2) Individual fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less.
- 2.
 - a. On or before January thirty-first, each licensed person who distributes a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment to an end user in this state shall:
 - (1) File with the commissioner a form stating the number of net tons [kilograms] of each listed product distributed in this state during the preceding calendar year; and

- (2) Submit to the commissioner the inspection fee required by this section.
- b. If a person fails to submit an inspection fee, at the time and in the manner required by this section, the commissioner may impose a penalty equal to ten percent of the amount due. The penalty must be equal to at least ten dollars.
- 3. a. On or before January thirty-first, each licensed person that distributes a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment to a licensed entity in this state shall file with the commissioner a form stating the number of net tons [kilograms] of each listed product distributed in this state during the preceding calendar year.
- b. If a person fails to file the form, at the time and in the manner required by this subsection, the commissioner may impose a late fee of thirty-five dollars.
- 4. Each distributor shall keep all records regarding purchases and sales for a period of three years. The records may be examined by the commissioner upon request.
- 5. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

19-20.1-07. Inspection fees and tonnage reports.

Repealed by S.L. 2013, ch. 187, § 18.

19-20.1-08. Inspection, sampling, analysis.

- 1. In order to determine compliance with this chapter and rules implemented under this chapter, the commissioner may enter upon real property and access any structure and personal property, during regular business hours, to sample, inspect, make analyses of, and test fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed in this state.
- 2. The methods of analysis and sampling must be those adopted by the commissioner from sources such as the Journal of the AOAC. In cases not covered by these methods, or if methods are available in which improved applicability has been demonstrated, the commissioner may adopt appropriate methods from other sources.
- 3. A single package may constitute an official sample. In determining for administrative purposes whether any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment is deficient, the commissioner must be guided solely by the commissioner's analysis of the official sample.
- 4. If the results of the commissioner's official analysis indicate that a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment may be the subject of a penalty or other legal action, the commissioner shall forward the analysis to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the commissioner, the report becomes official.
- 5. The commissioner shall retain any official samples found to be deficient for thirty days from issuance of the analytical report.
- 6. Upon request, the commissioner shall furnish to the registrant a portion of any sample found to be the subject of a penalty or other legal action.

19-20.1-09. Minimum plant food content.

Repealed by S.L. 1977, ch. 198, § 18.

19-20.1-10. Misbranding.

- 1. A person may not distribute a misbranded fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment. For purposes of this section, a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment is misbranded if:
 - a. False or misleading statements concerning the product are disseminated in any manner or by any means;
 - b. The product carries a false or misleading statement on the label;

- c. The product is distributed under the name of another product;
 - d. The product is not labeled as required by this chapter or rules implemented under this chapter; or
 - e. The product purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless the plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed in rule by the commissioner.
2. In adopting rules, the commissioner shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials.

19-20.1-11. Publications.

The commissioner may publish:

- 1. Information concerning the distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments; and
- 2. Results of analyses based on official samples of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed within the state as compared with the analyses guaranteed under sections 19-20.1-03 and 19-20.1-04.

19-20.1-12. Rules.

For the enforcement of this chapter, the commissioner may adopt and enforce rules relating to investigational allowances, definitions, records, licensing, inspection, analysis, labeling, storage, and distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments.

19-20.1-13. Deficiencies.

- 1. A product is deficient if one or more of its guaranteed primary plant nutrients or other guaranteed active ingredients falls below the investigational allowances and compensations as established by rule or if the overall index value of the fertilizer is shown below the level established by rule.
- 2. A deficiency in an official sample of mixed fertilizer resulting from nonuniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.
- 3. For the purpose of determining the commercial index value to be applied, the commissioner shall determine at least annually the values per unit of nitrogen, available phosphate, and soluble potash in fertilizers in this state.
- 4. If any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment in the possession of the consumer is found by the commissioner to be short in weight, the registrant of the product shall within thirty days after official notice from the commissioner pay to the consumer a penalty equal to four times the value of the actual shortage.

19-20.1-14. Cancellation of registrations.

- 1. The commissioner may cancel the registration of any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, may cancel the license of any distributor, may refuse to register any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, and may refuse to license any distributor, upon satisfactory evidence that the registrant, licensee, or distributor used fraudulent or deceptive practices in the evasions or attempted evasions of this chapter or any rules implemented under this chapter.
- 2. The commissioner may not refuse a registration or revoke a license without first providing an opportunity for a hearing.

19-20.1-15. Stop-sale orders.

The commissioner may issue a "stop-sale, use, or removal" order to the owner or custodian of any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, if the commissioner finds that the product is being offered for sale in violation of this chapter or a rule implemented under this chapter. The order must remain in effect until the commissioner:

1. Determines that the violation has been corrected;
2. Has given written authorization for the disposal of the product; or
3. Has given written authorization for the product to be offered for sale.

19-20.1-16. Seizure, condemnation, and sale.

1. Any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, not in compliance with this chapter and the rules implementing this chapter, is subject to seizure on complaint of the commissioner to the district court of the county in which the product is located.
2. If the court finds the product to be in violation of this chapter or a rule implementing this chapter and orders its condemnation, it must be disposed of in any manner consistent with the quality of the product and the laws of the state.
3. A court may not order disposition of the product without first giving the claimant an opportunity to apply for its release or for permission to process or relabel the product in order to bring it into compliance with this chapter and the rules implementing this chapter.

19-20.1-17. Violations - Criminal penalty.

1. If it appears from the examination of any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment that this chapter or the rules implementing this chapter have been violated, the commissioner shall cause notice of the violations to be given to the registrant, licensee, manufacturer, distributor, or possessor from whom the sample was taken. Any person so notified must be given an opportunity to be heard. If it appears after the hearing, either in the presence or absence of the person so notified, that this chapter or rules implementing this chapter have been violated, the commissioner may certify the facts to the proper prosecuting attorney.
2. Any person that violates this chapter or the rules implementing this chapter or that impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the commissioner in the performance of the commissioner's duty is guilty of a class A misdemeanor.
3. In all prosecutions under this chapter involving the composition of a lot of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments, a certified copy of the official analysis signed by the person performing the analysis or that person's assigned agent must be accepted as prima facie evidence of the composition.
4. The commissioner is not required to report for prosecution or institute seizure proceedings for minor violations of the chapter if the commissioner believes that the public interest will be best served by a suitable written warning.
5. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule implementing this chapter, notwithstanding the existence of other remedies at law. An injunction under this section must be issued without bond.

19-20.1-17.1. Violations - Civil penalty.

Any person that violates this chapter or a rule implementing this chapter is subject to a civil penalty in an amount up to two thousand five hundred dollars per violation. The civil penalty may be imposed by a court or by the agriculture commissioner in an administrative hearing.

19-20.1-18. Exchanges between manufacturers.

Nothing in this chapter may be construed to restrict or avoid sales or exchanges of fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to each other by importers, manufacturers, or manipulators who mix fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments for sale or as preventing the free and unrestricted shipments of fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to manufacturers or manipulators who have registered their brands as required by this chapter.